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# Cardoza v. United of Omaha: Tenth Circuit Focuses on Plain Languge of ERISA Plan to Uphold Benefit Calculation

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# *CARDOZA V. UNITED OF OMAHA*: TENTH CIRCUIT FOCUSES ON PLAIN LANGUAGE OF ERISA PLAN TO UPHOLD BENEFIT CALCULATION

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## INTRODUCTION

In *Cardoza v. United of Omaha Life Insurance Company*,[1] the Tenth Circuit Court of Appeals recently ruled that the plain language of a long-term disability benefits policy dictates how a claims administrator calculates benefits, and where the claims administrator makes its calculation pursuant to that language, its benefit decision is reasonable and made in good faith.[2] The court also rejected the argument that an insurer's conflict of interest as both claims administrator and payor of benefits should affect the court's review of the insurer's decision when the insurer took active steps to reduce potential bias and to promote accuracy.[3] This important opinion offers employee benefit plan administrators and insurers more certainty. They may rely on the plain language of their policies and the information provided by their policyholder to make benefit calculations, and they may take confidence in knowing that courts will recognize the safeguards insurers put in place to negate any bias that might arise from a conflict of interest.

## BACKGROUND

Jose Cardoza was employed by Durango-McKinley Paper Company (Durango-McKinley) as a truck driver.[4] As an employee benefit, Durango-McKinley provided its employees, including Cardoza, with disability insurance through United of Omaha Life Insurance Company (United of Omaha).[5] The Employee Retirement Income Security Act of 1974[6] (ERISA) governed the disability insurance plan.

In July 2008, Cardoza was involved in an accident and became disabled.[7] For twelve weeks following the accident, Cardoza applied for and received short-term disability (STD) benefits.[8] Under the STD policy,

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1. 708 F.3d 1196 (10th Cir. 2013).
2. *Id.* at 1203, 1207.
3. *Id.*at 1202.
4. *Id.* at 1200.
5. *Id.*
6. 29 U.S.C. §§ 1001–1461 (2012).
7. *Cardoza*, 708 F.3d at 1200.
8. *Id.*

STD benefits were a percentage of an employee's "Weekly Earnings," which the STD policy defined to be the employee's "average gross weekly earnings . . . during the [c]alendar [y]ear immediately prior to the year in which" the employee became disabled.[9] Durango-McKinley provided United of Omaha with Cardoza's actual earnings for 2007, a total of $61,881.47, so that United of Omaha could calculate his STD benefits under the STD policy.[10]

Cardoza then applied for long-term disability (LTD) benefits, hoping to use the same 2007 earnings figure.[11] But the LTD policy provided that United of Omaha should calculate the LTD benefits using the employee's "Basic Monthly Earnings."[12] The LTD policy defined "Basic Monthly Earnings" to mean the employee's "average gross monthly earnings received from . . . [Durango-McKinley] and *verified by premium* [that United of Omaha] received during the [c]alendar [y]ear immediately prior to the year in which" the employee became disabled.[13] In calculating Cardoza's LTD benefits, United of Omaha used a Basic Monthly Earnings figure based on an annual salary of $24,273.60, not Cardoza's actual earnings from 2007.[14] Pursuant to the LTD Policy's plain language, United of Omaha reached the $24,273.60 number using the premiums Durango-McKinley had paid during the year prior to Mr. Cardoza's becoming disabled.[15]

Cardoza objected to United of Omaha's calculation of his LTD benefits, asserting that it should have used his actual 2007 earnings of $61,881.47.[16] United of Omaha replied that it had properly based the LTD benefit calculation on the $24,273.60 earnings amount because that was the amount on which Durango-McKinley had paid insurance premiums in 2007.[17] United of Omaha also notified Cardoza that it had mistakenly calculated his STD benefits and asked for reimbursement of the overpayment.[18] Cardoza refused and after failing to overturn the LTD benefit calculation through United of Omaha's appeal process, filed suit against United of Omaha in federal court challenging the calculation of his LTD benefits.[19] United of Omaha counter-claimed, seeking, among other things, the overpayment of the STD benefit.

The U.S. District Court for the District of New Mexico granted Cardoza's motion for summary judgment and denied United of Omaha's

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9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id* (first alteration in original) (emphasis added).
14. *Id.*
15. *Id.* at 1200–01.
16. *Id.*
17. *Id.* at 1201.
18. *Id.*
19. *Id.*

cross-motion, concluding that United of Omaha's decision to calculate Cardoza's LTD benefits and recalculate his STD benefits was arbitrary and capricious.[20] The district court also granted Cardoza's motion for attorney's fees and costs.[21] United of Omaha appealed both rulings.

TENTH CIRCUIT REVERSES, FINDING LTD BENEFITS CALCULATION WAS REASONABLE

Reviewing the district court's summary judgment orders de novo, the Tenth Circuit considered United of Omaha's decision "under the arbitrary and capricious or abuse of discretion standard because both the LTD and STD policies grant[ed] United of Omaha discretion[ary] authority" to interpret their terms.[22] Accordingly, the court was tasked with determining whether United of Omaha's interpretation of the policies was reasonable.

However, one of the factors used in determining whether a claims administrator in an ERISA case acted in an arbitrary and capricious manner is its conflict of interest. In this case, United of Omaha acted as both claims administrator and payor of benefits, giving it a structural conflict of interest. The Supreme Court has directed lower courts to give conflicts of interest more or less weight, depending on their seriousness.[23] Cardoza claimed that United of Omaha's conflict of interest contaminated its decision-making process.[24] United of Omaha, however, successfully "show[ed] the steps [that it] took to minimize its conflict of interest, including: (1) claims analysts are not allowed access to claim reserve information and are not provided actuarial or financial information regarding their claims handling or the effect of their claims handling on company financial results[;] (2) all claims analysts are physically segregated from the Premium, Sales, Underwriting, and Actuary departments, as well as Quality Auditors[; and (3)] claims personnel are paid a salary or hourly wage, and are not paid any incentive compensation based on the payment or denial of claims."[25] The court found that these active steps reduced the potential bias and conflict of interest and instead promoted accuracy.[26] The court therefore accorded almost no weight to United of Omaha's conflict of interest as a factor in determining whether its decisions were arbitrary and capricious.[27]

The court then examined United of Omaha's calculation of Cardoza's LTD benefits. The Court looked to the plain text of the LTD policy

20. *Id.*
21. *Id.*
22. *Id.*
23. *See, e.g.*, Metro. Life Ins. Co. v. Glenn, 554 U.S. 105 (2008).
24. *Cardoza*, 708 F.3d at 1202.
25. *Id.* (internal quotations omitted).
26. *Id.*
27. *Id.* at 1202–03.

to find that United of Omaha needed to calculate the "LTD benefits based on [Cardoza's] earnings as verified by premium received by United of Omaha during 2007."[28] Evidence showed that "Cardoza's earnings as verified by the premium . . . received during 2007 were $24,273.60."[29] The record also showed that Cardoza was classified as an eligible hourly employee whose annual earnings were less than $40,000.[30] Although providing evidence of his actual earnings in 2007, Cardoza was unable to contradict the evidence that United of Omaha received premiums based on the $24,273.60 earnings figure.

Cardoza relied heavily on a decision by the Ninth Circuit Court of Appeals in which that court analyzed "verified by premium" language that was similar to that in the United of Omaha LTD policy, concluding that the "verified by premium" clause was not "an absolute bar to relying on accurate income statements in calculating benefits."[31] The Tenth Circuit distinguished this case from the Ninth's Circuit's case by pointing to a difference in the policy language.[32] Where the policy in the Ninth Circuit case allowed the insurer to adjust its payment to the employee based on updated income documentation, the LTD policy in Cardoza's case did not contain similar "adjustment" language.[33] Therefore, the court ruled that Cardoza's actual income information was irrelevant to the benefit calculation because United of Omaha was bound by the plain language of the policy to calculate benefits only on the earnings verified by premium.[34]

Concluding that the plain text of the LTD policy instructed United of Omaha to calculate Cardoza's LTD benefits based on his earnings verified by premium during 2007, and finding that United of Omaha had done so, the Court held that United of Omaha's decision to base its LTD benefits calculation on the $24,273.60 amount was reasonable and made in good faith and therefore, not arbitrary and capricious.[35] Because similar "verified by premium" language was not in the STD policy, the Court upheld the lower court's decision on the STD benefits.[36] The Court reversed the district court's grant of summary judgment to Cardoza and remanded the case for reconsideration of the award of attorney's fees and costs.[37]

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28. *Id.* at 1203.
29. *Id.*
30. *Id.*
31. *Id.* at 1204 (citing Mort v. United of Omaha Life Ins. Co., 444 F. App'x 208, 209–10 (9th Cir. 2011).
32. *Id.* at 1204–05.
33. *Id.*
34. *Id.* at 1205.
35. *Id.* at 1206.
36. *Id.* at 1206–07.
37. *Id.* at 1208.

EFFECT OF CARDOZA DECISION

*Cardoza* establishes two important principles that offer clarity for ERISA litigation. First, *Cardoza* helps identify key steps claims administrators operating under a conflict of interest can take to ensure courts will put little weight on the conflict. Second, claims administrators can consistently rely on the plain text of their policies when calculating benefits. If the claims administrator follows the plain language of the policy, courts will likely review the calculation as reasonable and made in good faith.